INDEX.

CITATIONS.

CASES:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 137

BLOOMFIELD RANCH, by JAMES A. CLAYTON & CO., a corporation, managing partner, operator and co-owner thereof, and by FLORENCE G. BALDWIN, JOHN DERROL CHACE, WILLIS SHERMAN CLAYTON, JR., ARTHUR D. CURTNER, JOHN KIRK DORRENCE, ROSE L. FITCH, MARGARET F. COYKENDALL, HUGH S. HERSMAN, ALFRED A. HAPGOOD, GEORGE H. OSEN, ALFRED L. PARKINSON, Estate of Andrew R. Patrick, deceased, by SIGURD C. P. CORNETT, as executor of the will of Andrew R. Patrick, deceased, SAN JOSE HARDWARE CO., a corporation, NELLIE SHILLINGSBURG, ANNE THOMPSON, SARAH SHILLINGSBURG BARRY, MARGARET LEAMAN, and estate of Ellen Weinstein, deceased, by Wells Fargo Bank & Union Trust Co., Executor, substituted for Estate of Samuel Weinstein, deceased, by Ellen Weinstein, as executrix of the will of Samuel Weinstein, deceased, partners in and co-owners of Bloomfield Ranch, *Petitioners*

v.

COMMISSIONER OF INTERNAL REVENUE

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

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BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the Tax Court (R. 212-227) is not reported. The opinion of the Circuit Court of Appeals (R. 260-277) is reported at 167 F. 2d 586.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 20, 1948. (R. 277-278.) The petition for rehearing was denied May 24, 1948. (R. 278.) The petition for a writ of certiorari was filed July 6, 1948. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the court below erred in affirming the Tax Court's decision that Bloomfield Ranch is an "association" taxable as a corporation under Section 3797(a)(3) of the Internal Revenue Code and the applicable Treasury Regulations.

STATUTE AND REGULATIONS INVOLVED

These appear in the Appendix, *infra*, pp. 15-22.

STATEMENT

The facts as stipulated (R. 202-211) and found by the Tax Court (R. 212-219) may be summarized as follows:

In 1926 James A. Clayton & Company (hereafter called "Clayton Company"), a real estate agent,

induced 13 of its customers to join with it in the purchase of 21 separate parcels of California land from its then owner, Miller & Lux, Inc. The parcels were widely scattered in 3 counties, and contained about 27,500 acres suitable for various agricultural purposes and 42 acres of city property. Clayton Company and the 13 individuals who joined with it each invested $50,000 and formed a syndicate known as Bloomfield Ranch, hereafter referred to as "taxpayer".[1] The agreement of the parties was represented by 14 separate but identical written instruments signed by Clayton Company as "Operator" and by each participant as "Investor". (R. 212-214.) The agreement is reproduced in full at R. 167-170, and is summarized in the Tax Court's findings at R. 214-216. Briefly, it provided as follows:

The Operator was to use the fund contributed by the Investors to purchase the properties, and could take title in the name of any person or corporation. It was empowered, among other things, to borrow additional funds to help finance the purchase; to "sell, convey, hold, lease for one season only, or in any otherwise deal with" the properties as absolute owner; and to "incur such costs, expenses, and charges in connection with the acquir-

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[1] While Bloomfield Ranch is referred to as "taxpayer", the petitioners are its 19 outstanding members. It filed a partnership return for the taxable year (R. 190), in which the members were described as partners (R. 194).

ing, holding, renting, selling or protecting" the properties it deemed proper. The Operator was to receive a commission of $50,000 for negotiating the purchase, and a 5% commission on resales. Distributions were to be made to the Investors whenever the Operator had a net amount of $7,000 or more on hand. When and as all the properties were sold and all expenses paid, the net proceeds were to be divided among the Investors or their heirs and assigns. Each Investor was entitled to an accounting upon demand, but not more often than once every sixty days. The agreement was binding upon the "successors, heirs, representatives and assigns" of the parties.

In March of 1926 Clayton Company paid Miller & Lux, Inc., $1,235,000 for the properties. It borrowed $585,000 which, with the $700,000 contributed by the Investors, covered the purchase price plus its commission of $50,000. Titles were taken in the name of one Thomas, an employee. (R. 216.) The properties were purchased subject to outstanding leases which had been made by Miller & Lux, Inc., and the rentals from these leases amounted to $34,041 in 1926. (R. 216.) Miller & Lux had installed 9 wells and pumping units on the properties, and Clayton Company installed some new ones and repaired the old ones at a total cost of $37,903. (R. 218-219.)

From 1926 through the taxable year (1940) the operations of Clayton Company consisted of farm-

ing, renting, and selling the properties; collecting rents under leases, and payments of principal and interest on installment sales; paying taxes; disposing of farm products; and in general attending to financial and accounting aspects of the venture. (R. 218). By the end of 1927 Clayton Company had repaid the $585,000 borrowed as part of the purchase price of the properties, and by the end of 1930 about 90% of the properties had been sold. After 1930 sales dropped sharply due to the depression, and only 60 acres were sold in the next 10 years. There was never any intention to sub-divide the 42 acres of city property into lots, and Clayton Company refused to sell this acreage in units of less than one city block. (R. 216-217.) During the fifteen-year period from 1926 through 1940 interest received totalled $156,402.85, profits from sales totalled $311,766.93, gross rentals totalled $456,062.91, and miscellaneous receipts totalled $19,533.97. Total gain over the cost of the properties amounted to $541,843.06. (R. 218.) Income from farming and rent was accounted for separately on tax returns; with the exception of 3 years the farming operations were conducted at a loss. (R. 217-218.)

Distributions totaling $98,250 have been made on each of the 14 investment units, or a total of $1,375,500. This represents a return of the original $700,000 capital invested in the enterprise plus profits from all operations. (R. 218.)

Changes have occurred in ownership of the Investors' interests due to deaths, transfers and sales of all or a part of the original 14 Investor units. There are now 19 Investors holding the original 14 interests, some holding less and others holding more than a 1/14 interest. Whenever any change in Investor interests occurred Clayton Company was notified and made formal acknowledgment and record of the change. The original agreement of each Investor had attached to its endorsement of any transfer. (R. 219.)

Taxpayer reported its income for the taxable year as a partnership. (R. 190, 212.) The Commissioner determined that the enterprise was an "association" taxable as a corporation under Section 3797 (a) (3) of the Internal Revenue Code, resulting in the deficiencies in controversy. (R. 21-22.) The Tax Court sustained his determination (R. 219, 227-228), the Circuit Court of Appeals affirmed (R. 260-278), and taxpayer's petition for rehearing was denied (R. 278).

ARGUMENT

This case is controlled by *Morrissey* v. *Commissioner*, 296 U. S. 344, and the companion cases of *Swanson* v. *Commissioner,* 296 U. S. 362; *Helvering* v. *Combs,* 296 U. S. 365; and *Helvering* v. *Coleman-Gilbert,* 296 U. S. 369. There is no conflict, and no occasion for further review.

1. The Internal Revenue Code makes its own classification of business organizations for federal income tax purposes. Section 3797 (a) (2) (Appendix, *infra*) defines a "partnership" as including any joint business venture "which is not, within the meaning of this title, a trust or estate or a corporation". Section 3797 (a) (3) in turn defines a "corporation" as including "associations". The principles determinative of whether a joint business venture is an "association", and hence taxable as a corporation, were settled by this Court in the *Morrissey* and companion cases, *supra*, and are embodied in the long-standing applicable Treasury Regulations. Sections 19.3797-1 to 19.3797-5 of Treasury Regulations 103 (Appendix, *infra*). "The inclusion of associations with corporations implies resemblance; but it is resemblance and not identity". *Morrissey* v. *Commissioner, supra*, p. 357. Whether the organization is sufficiently analogous to a corporation to justify its tax treatment as such depends on whether it has the salient features of a conventional corporation: centralized management, continuity of existence uninterrupted by the death of a participant or change in ownership of a participating interest, transferability of the participating interests, limited liability of the participants, and continuity of title to the property embarked in the enterprise.

Applying the criteria laid down in the *Morrissey* and companion cases the Tax Court concluded that,

with the possible exception of the limited liability feature,[2] taxpayer possessed all the important attributes of a corporation. (R. 220, 225-227.) And the record unquestionably warrants that conclusion. Taxpayer was organized by identical instruments of agreement between an "Operator" and 14 "Investors" who invested cash in a joint business undertaking and received participating interests in the enterprise. (R. 167-170, 213-214, 222-223.) Management of the business was centralized in the Operator (R. 167-168, 217-218); the organization was not interrupted by the death of any Investor or by a change of Investor interests (R. 170); the interests of the Investors were transferable, and have been transferred in whole or in part (R. 171-186, 219); and continuity of title was assured by provisions authorizing the Operator to take title in the name of any person or corporation (R. 167-168, 224). Through the Operator taxpayer engaged for 15 years (including the taxable year)

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[2] As the Tax Court observed (R. 226-227), it is not clear whether liability to third parties was limited, although it would seem so. In any event, absence of limited liability is not decisive if the organization is otherwise analogous to a corporation. Section 19.3797-4 of Regulations 103; *Burk-Waggoner Assn.* v. *Hopkins*, 269 U. S. 110; *Helm & Smith Syndicate* v. *Commissioner*, 136 F. 2d 440, 441 (C. C. A. 9th); *Bert* v. *Helvering*, 92 F. 2d 491, 495 (App. D. C.); *Del Mar Addition* v. *Commissioner*, 113 F. 2d 410, 411 (C. C. A. 5th); *Pennsylvania Co. for Insurances, Etc.* v. *United States*, 138 F. 2d 869, 874 (C. C. A. 3d), certiorari denied, 321 U. S. 788; *Fletcher* v. *Clark*, 150 F. 2d 239 (C. C. A. 10th), certiorari denied, 326 U. S. 763.

in extensive farming, renting, selling and other business activities (R. 217-218), from which the Investors realized almost 100% profit on their investment (R. 218). In the light of these uncontroverted facts affirmance of the Tax Court's decision by the court below was clearly correct. Here, as in *Helvering* v. *Combs, supra*, p. 368, "The parties joined in a common enterprise for the transaction of business, and the beneficiaries [here the Investors] who contributed money for that purpose became associated in the enterprise according to the terms of the arrangement". See also *Morrissey* v. *Commissioner, supra*, p. 357.

2. In affirming the Tax Court's decision the court below did not, as taxpayer asserts (Pet. 2-3, 12; Br. 21, 22-26), adopt a test different from that prescribed in the *Morrissey* and companion cases. It could hardly have done so, for the Tax Court's decision is rooted in those cases. (R. 220.) Far from repudiating the principles of the *Morrissey* case, the court below expressly held that "We are in accord with the Tax Court that in organization and manner of operation this enterprise is an association within the ambit of the principles laid down in the *Morrissey* case". (R. 275.) It properly addressed itself, as did the Tax Court, to the basic question presented—whether taxpayer sufficiently resembled a corporation to justify taxation of its income as such; and it proceeded to point out, as had the Tax Court, that taxpayer possessed the es-

sential characteristics of a corporation. (R. 275-277.) In an effort to find conflict with the *Morrissey* case taxpayer seizes (Br. 22-23) upon a superfluous portion of the opinion below, isolated from its context, and ignores the plain tenor of the opinion as a whole.[3] That in sustaining the Tax Court the court below may have strayed from the issue cannot affect the result, and furnishes no occasion for further review.

Commissioner v. *Gerstle,* 95 F. 2d 587 (C. C. A. 9th), upon which taxpayer chiefly relies for conflict (Br. 26-31), was decided by the very court which decided this case and is distinguishable for the reasons noted by it in the opinion below (R. 273-275), and also in *Helm & Smith Syndicate* v. *Commissioner,* 136 F. 2d 440, 441 (C. C. A. 9th), and *United States* v. *Homecrest Tract,* 160 F. 2d 150, 153, fn. 7 (C. C. A. 9th). It is doubtful whether, in view of these later decisions by the same court (including its decision here), the

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[3] The portion of the opinion below relied upon by taxpayer was directed to its irrelevant contention that there was no "joint activity" by the Investors. (R. 269-270.) It is the "*entering* into a joint enterprise" having the salient features of a corporation (*Morrissey* v. *Commissioner, supra,* p. 356 (italics ours)), not the joint *activity* of the members, which warrants treatment of it as an "association" taxable as a corporation. "Undoubtedly the terms of an association may make the taking or acquiring of shares or interests sufficient to constitute participation, and may leave the management, or even control of the enterprise, to designated persons". *Morrissey* v. *Commissioner, supra,* p. 357.

Gerstle case still has any vitality. In *Commissioner* v. *Rector & Davidson*, 111 F. 2d 332 (C. C. A. 5th), certiorari denied, 311 U. S. 672, upon which taxpayer also relies for conflict (Br. 26), the "continuity" feature was lacking (p. 333), and the Circuit Court of Appeals affirmed the Tax Court's decision that the enterprise was more akin to a partnership than to a corporation. No useful purpose can be served by an analysis of the legion of cases in this field since each turns, as it must, on its own facts. If any comparison with other cases is to be drawn, we submit that the one at hand bears less similarity to the few upon which taxpayer relies than to the many in which the organization involved was held to be an "association".[4]

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[4] See, *e.g.*, *Wabash Oil & Gas Ass'n* v. *Commissioner*, 160 F. 2d 658 (C. C. A. 1st), certiorari denied, 331 U. S. 843; *Wellston Hills Syndicate Fund* v. *Commissioner*, 101 F. 2d 924 (C. C. A. 8th); *Kilgallon* v. *Commissioner*, 96 F. 2d 337 (C. C. A. 7th), certiorari denied, 305 U. S. 622; *United States* v. *Rayburn*, 91 F. 2d 162 (C. C. A. 8th); *Bert* v. *Helvering*, *supra*; *Bordages Estate Trust* v. *Commissioner*, 159 F. 2d 62 (C. C. A. 5th); *Fletcher* v. *Clark*, *supra*; *Poplar Bluff Printing Co.* v. *Commissioner*, 149 F. 2d 1016 (C. C. A. 8th); *Sherman* v. *Commissioner*, 146 F. 2d 219 (C. C. A. 6th); *National Metropolitan Bank* v. *Commissioner*, 145 F. 2d 649 (C. C. A. 4th); *Adkins Properties* v. *Commissioner*, 143 F. 2d 380 (C. C. A. 5th); *Commissioner* v. *City Nat. Bank & T. Co.*, 142 F. 2d 771 (C. C. A. 10th), certiorari denied, 323 U. S. 764; *United States* v. *Hill*, 142 F. 2d 622 (C. C. A. 10th); *Pennsylvania Co. for Insurances, Etc.* v. *United States*, *supra*; *Sibley Syndicate* v. *Commissioner*, 131 F. 2d 224 (C. C. A. 6th), certiorari denied, 318 U. S. 786; *Keating-*

3. Nothing in the statute, the Regulations, the controlling decisions, or elsewhere, warrants taxpayer's assumption (Pet. 4, 12; Br. 32-34) that local law governs the classification of business organizations for tax purposes. This Court has held directly to the contrary. *Burk-Waggoner Assn.* v. *Hopkins*, 269 U. S. 110; *Morrissey* v. *Commissioner, supra;* see also *United States* v. *Homecrest Tract, supra.* The applicable Treasury Regulations (Sections 19.3797-1 and 19.3797-4 of Regulations 103) specifically provide otherwise, and since the statutory provisions to which they are addressed have been repeatedly reenacted the Treasury's interpretation must be deemed to have received implied Congressional approval. *Morrissey* v. *Commissioner, supra*, p. 355; *Coast Carton Co.* v. *Commissioner*, 149 F. 2d 739 (C. C. A. 9th); *Sher-*

Snyder Trust v. *Commissioner*, 126 F. 2d 860 (C. C. A. 5th); *Commissioner* v. *Nebo Oil Co., Trust*, 126 F. 2d 148 (C. C. A. 10th), certiorari denied, 317 U. S. 636; *Second Carey Trust* v. *Helvering*, 126 F. 2d 526 (App. D. C.), certiorari denied, 317 U. S. 642; *Commissioner* v. *Fortney Oil Co., Etc.*, 125 F. 2d 995 (C. C. A. 6th); *Nashville Trust Co.* v. *Cotros*, 120 F. 2d 157 (C. C. A. 6th), amended, 122 F. 2d 326, certiorari denied, 314 U. S. 680; *Fidelity-Bankers Trust Co.* v. *Helvering*, 113 F. 2d 14 (App. D. C.), certiorari denied, 310 U. S. 649; *Del Mar Addition* v. *Commissioner, supra; Sears* v. *Hassett*, 111 F. 2d 961 (C. C. A. 1st); *Marshall's Heirs* v. *Commissioner*, 111 F. 2d 935 (C. C. A. 3d), certiorari denied, 311 U. S. 658; *Hamilton Depositors Corp.* v. *Nicholas*, 111 F. 2d 385 (C. C. A. 10th); *Ross Lewis Trust* v. *Commissioner*, 110 F. 2d 937 (C .C. A. 10th).

man v. *Commissioner,* 146 F. 2d 219 (C. C. A. 6th).[5]

4. Nor is there any substance in taxpayer's contention (Pet. 4-5, 12; Br. 34-40), advanced for the first time in the petition for certiorari, that the Commissioner is estopped from determining taxpayer's correct tax liability for the taxable year here involved[6] merely because he did not assert any liability for prior taxable years. Taxpayer's enjoyment of tax immunity for years which cannot be reopened obviously does not endow it with permanent immunity. Even if the Commissioner had made a previous determination of taxpayer's tax liability for the very year here involved, he would not have been precluded from reexamining and changing his determination within the statutory period of limitations. *Burnet* v. *Porter,* 283 U. S. 230; *Bonwit Teller & Co.* v. *Commissioner,* 53 F. 2d 381 (C. C. A. 2d), certiorari denied, 284 U. S. 690;

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[5] Taxpayer's contention (Br. 32-33) that under local law the Investors were beneficiaries of a resulting trust is irreconcilable with its partnership return designating them as partners (R. 190, 194), and with its concurrent insistence that it is a partnership. But even granting, *arguendo,* that taxpayer is a trust, its position is in no wise aided; the enterprise would nonetheless fall within the category of business trusts taxable as associations. Section 19.3797-3 of Regulations 103; *Morrissey* v. *Commissioner, supra.*

[6] There is no basis for taxpayer's charge (Pet. 12; Br. 35) that the decision below subjects it to tax "penalties". The only tax liability asserted by the Commissioner was for deficiency in tax (R. 19-22), and that is the only liability imposed by the decision below (R. 227-228).

Schafer v. *Helvering*, 83 F. 2d 317 (App. D. C.), affirmed, 299 U. S. 171. *A fortiori*, he is not foreclosed from making an original deficiency determination for a year still open.

CONCLUSION

The decision below is correct. There is no conflict, and no occasion for further review. The petition should therefore be denied.

Respectfully submitted,

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August, 1948

APPENDIX

Internal Revenue Code:

SEC. 3797. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

* * *

(2) *Partnership and Partner.*—The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) *Corporation.*—The term "corporation" includes associations, joint-stock companies, and insurance companies.

* * *

(26 U. S. C. 3797.)

Treasury Regulations 103, promulgated under the Internal Revenue Code:

SEC. 19.3797-1. CLASSIFICATION OF TAXABLES.—For the purpose of taxation the Internal Revenue Code makes its own classification and prescribes its own standards of classification. Local law is of no importance in this connection. Thus, a trust may be classed as a trust or as an association (and, therefore, as a corporation), depending upon its na-

ture or its activities. (See section 19.3797-3.) The term "partnership" is not limited to the common law meaning of partnership, but is broader in its scope and includes groups not commonly called partnerships. (See section 3797-4.) The term "corporation" is not limited to the artificial entity usually known as a corporation, but includes also an association, a trust classed as an association because of its nature or its activities, a joint-stock company, an insurance company, and certain kinds of partnerships. (See sections 19.3797-2 and 19.3797-4.) The definitions, terms, and classifications, as set forth in section 3797, shall have the same respective meaning and scope in these regulations.

SEC. 19.3797-2. ASSOCIATION.—The term "association" is not used in the Internal Revenue Code in any narrow or technical sense. It includes any organization, created for the transaction of designated affairs, or the attainment of some object, which, like a corporation, continues notwithstanding that its members or participants change, and the affairs of which, like corporate affairs, are conducted by a single individual, a committee, a board, or some other group, acting in a representative capacity. It is immaterial whether such organization is created by an agreement, a declaration of trust, a statute, or otherwise. It includes a voluntary association, a joint-stock association or com-

pany, a "business" trust, a "Massachusetts" trust, a "common law" trust, an "investment" trust (whether of the fixed or the management type), an interinsurance exchange operating through an attorney in fact, a partnership association, and any other type of organization (by whatever name known) which is not, within the meaning of the Code, a trust or an estate, or a partnership. If the conduct of the affairs of a corporation continues after the expiration of its charter, or the termination of its existence, it becomes an association.

SEC. 19.3797-3. ASSOCIATION DISTINGUISHED FROM TRUST.—The term "trust," as used in the Internal Revenue Code, refers to an ordinary trust, namely, one created by will or by declaration of the trustees or the grantor, the trustees of which take title to the property for the purpose of protecting or conserving it as customarily required under the ordinary rules applied in chancery and probate courts. The beneficiaries of such a trust generally do no more than accept the benefits thereof and are not the voluntary planners or creators of the trust arrangement. Even though the beneficiaries do create such a trust, it is ordinarily done to conserve the trust property without undertaking any activity not strictly necessary to the attainment of that object.

As distinguished from the ordinary trust described in the preceding paragraph there is an arrangement whereby the legal title to the property

is conveyed to trustees (or a trustee) who, under a declaration or agreement of trust, hold and manage the property with a view to income or profit for the benefit of beneficiaries. Such an arrangement is designed (whether expressly or otherwise) to afford a medium whereby an income or profit-seeking activity may be carried on through a substitute for an organization such as a voluntary association or a joint-stock company or a corporation, thus obtaining the advantages of those forms of organization without their disadvantages. The nature and purpose of a cooperative undertaking will differentiate it from an ordinary trust. The purpose will not be considered narrower than that which is formally set forth in the instrument under which the activities of the trust are conducted.

If a trust is an undertaking or arrangement conducted for income or profit, the capital or property of the trust being supplied by the beneficiaries, and if the trustees or other designated persons are, in effect, the managers of the undertaking or arrangement, whether the beneficiaries do or do not appoint or control them, the beneficiaries are to be treated as voluntarily joining or cooperating with each other in the trust, just as do members of an association, and the undertaking or arrangement is deemed to be an association classified by the Internal Revenue Code as a corporation. However, the fact that the capital or property of the trust is not supplied by the beneficiaries is not sufficient

reason in itself for classifying the arrangement as an ordinary trust rather than as an association.

By means of such a trust the disadvantages of an ordinary partnership are avoided, and the trust form affords the advantages of unity of management and continuity of existence which are characteristic of both associations and corporations. This trust form also affords the advantages of capacity, as a unit, to acquire, hold, and dispose of property and the ability to sue and be sued by strangers or members, which are characteristic of a corporation; and also frequently affords the limitation of liability and other advantages characteristic of a corporation. These advantages which the trust form provides are frequently referred to as resemblance to the general form, mode of procedure, or effectiveness in action, of an association or a corporation, or as "quasi-corporate form." The effectiveness in action in the case of a trust or of a corporation does not depend upon technical arrangements or devices such as the appointment or election of a president, secretary, treasurer, or other "officer," the use of a "seal," the issuance of certificates to the beneficiaries, the holding of meetings by managers or beneficiaries, the use of a "charter" or "by-laws," the existence of "control" by the beneficiaries over the affairs of the organization, or upon other minor elements. They serve to emphasize the fact that an organization possessing them should be treated as a corporation, but they

are not essential to such classification, for the fundamental benefits enjoyed by a corporation, as outlined above, are attained, in the case of a trust, by the use of the trust form *itself*. The Internal Revenue Code disregards the technical distinction between a trust agreement (or declaration) and ordinary articles of association or a corporate charter, and all other differences of detail. It treats such a trust according to its essential nature, namely, as an association. This is true whether the beneficiaries form the trust or, by purchase or otherwise, acquire an interest in an existing trust.

The mere size or amount of capital invested in the trust is of no importance. Sometimes the activity of the trust is a small venture or enterprise, such as the division and sale of a parcel of land, the erection of a building, or the care and rental of an office building or apartment house; sometimes the activity is a trade or business on a much larger scale. The distinction is that between the activity or purpose for which an ordinary strict trust of the traditional type would be created, and the activity or purpose for which a corporation for profit might have been formed.

SEC. 19.3797-4. PARTNERSHIPS.—The Internal Revenue Code provides its own concept of a partnership. Under the term "partnership" it includes not only a partnership as known at common law but, as well, a syndicate, group, pool, joint venture, or other unincorporated organization which car-

ries on any business, financial operation, or venture, and which is not, within the meaning of the Code, a trust, estate, or a corporation. On the other hand the Code classifies under the term "corporation" an association or joint-stock company, the members of which may be subject to the personal liability of partners. If an organization is not interrupted by the death of a member or by a change in ownership of a participating interest during the agreed period of its existence, and its management is centralized in one or more persons in their representative capacities, such an organization is an association, taxable as a corporation. As to the characteristics of an association, see also sections 19.3797-2 and 19.3797-3. The following examples will illustrate some phases of these distinctions:

(1) If A and B buy some acreage for the purpose of subdivision, they are joint adventurers, and the joint venture is classified by the Code as a partnership.

(2) A, B, and C contribute $10,000 each for the purpose of buying and selling real estate. If A, B, C, or D, an outside party (or any combination of them as long as the approval of each participant is not required for syndicate action), takes control of the money, property and business of the enterprise, and the syndicate is not terminated on the death of any of the participants, the syndicate is classified as an association.

SEC. 19.3797-5. LIMITED PARTNERSHIPS.—A limited partnership is classified for the purpose of the Internal Revenue Code as an ordinary partnership, or, on the other hand, as an association taxable as a corporation, depending upon its character in certain material respects. If the organization is not interrupted by the death of a general partner or by a change in the ownership of his participating interest, and if the management of its affairs is centralized in one or more persons acting in a representative capacity, it is taxable as a corporation. For want of these essential characteristics, a limited partnership is to be considered as an ordinary partnership notwithstanding other characteristics conferred upon it by local law.

The Uniform Limited Partnership Act has been adopted in several States. A limited partnership organized under the provisions of that Act may be either an association or a partnership depending upon whether or not in the particular case the essential characteristics of an association exist.

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